

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of: ) MM DOCKET No.: 99-153  
)  
READING BROADCAST, INC. ) File No.: BRCT-940407KF  
For Renewal of License of )  
Station WTVE (TV), Channel 51 )  
Reading, Pennsylvania )  
)  
and )  
)  
ADAMS COMMUNICATIONS ) File No.: BRCT-940630KG  
CORPORATION )  
For Construction Permit for a )  
New Television Station to )  
Operate on Channel 51 )  
Reading, Pennsylvania )

Room TWA-363  
FCC Building  
445 Twelfth Street, S.W.  
Washington, D.C.

Monday,  
June 12, 2000

The parties met, pursuant to the notice of the  
Judge at 9:35 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On behalf of Reading Broadcasting, Inc.:

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## APPEARANCES (CONTINUED):

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On Behalf of the Federal Communications  
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E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Adams Communications Corp.:</u>			
Ex. 44 through 48	1576	1576	---
Official Notice 1	1585	1585	---
Ex. 49	1588	1588	---
Ex. 50	1589	1589	---
Ex. 51	1590	1590	---
Ex. 52	1591	1592	---
Ex. 53	1593	1593	---
Ex. 54	1594	1594	---
Ex. 55	1595	1595	---
Ex. 56	1596	1596	---
Ex. 57	1596	---	1598
Ex. 58	1600	1600	---
Ex. 59	1601	1603	---
Ex. 60	1605	---	---
Ex. 61	1606	---	---
Ex. 62	1624	---	---
Ex. 63	1625	1626	---
Ex. 64	1627	1627	---
Ex. 65	1628	1628	---
Ex. 66	1630	1630	---
Ex. 67	1630	---	---
Ex. 68	1632	1633	---

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>REJECTED</u>
<u>Adams Communications Corp. (Continued):</u>			
Ex. 69	1634	1637	---
Ex. 70	1637	---	---
Ex. 71	1639	1640	---
Ex. 72	1640	1640	---
Ex. 73	1641	1641	---
Ex. 74	1642	1642	---
Ex. 75	1642	1642	---
Ex. 76	1644	1644	---
Ex. 77	1646	1646	---
<u>Reading Broadcasting, Inc.:</u>			
Ex. 25 through 42	1580	1580	---
Ex. 48	1582	1582	---
Ex. 46	1615	1615	---
Ex. 47	1618	1618	---
Ex. 43	1619	---	---
Ex. 44	1621	1621	---
Ex. 45	1622	1622	---

P R O C E E D I N G S

(9:35 a.m.)

JUDGE SIPPEL: Okay. We are on the record. This is the beginning of the hearings in Phase 2/Phase 3 in the applications of Reading Broadcasting, Inc. and Adams Communications Corporation. I am going to ask counsel now to please note their appearances for the record starting with counsel for Reading.

MR. HUTTON: Thomas Hutton and Dennis Southard.

JUDGE SIPPEL: Okay. And on behalf of Adams Communications.

MR. COLE: Harry Cole and Gene Bechtel.

JUDGE SIPPEL: And on behalf of the Enforcement Bureau.

MR. SHOOK: James Shook.

JUDGE SIPPEL: I indicated in an order that I issued on June 12 -- I'm sorry, on June 9th, today is June 12th, 00M38, that I wanted to take up witnesses, Reading's witnesses as a preliminary matter inasmuch as there is a pending motion by Adams against the scope of the witnesses. Before I get into that, is there anything that anybody else wanted to raise as a preliminary matter that might make anything easier for us today?

MR. COLE: I'm not sure I have anything that is going to make anything easier. But I thought -- I have --

1 it might be useful if I were to set out what I anticipate my  
2 schedule of witnesses for Phase 2 is going to be if that is  
3 going to be helpful for scheduling purposes.

4 JUDGE SIPPEL: Yes. So go on and do that.

5 MR. COLE: Should I do that first or after --

6 JUDGE SIPPEL: Well, let's see if we get this --  
7 since there is a motion pending, I would like to get the  
8 pleadings element out of the way. Before I -- I understand  
9 what the Bureau -- sorry, I do not understand what the  
10 positions is. Does the Bureau have a position with respect  
11 to these witnesses, the Reading witnesses?

12 MR. SHOOK: The only position was the one that I  
13 mentioned some time ago at the last conference which was to  
14 the effect that any witnesses that appeared, we wanted to be  
15 able to cross examine. And I thought everybody understood  
16 that that was acceptable and that we didn't need to send out  
17 any further paperwork on the subject.

18 JUDGE SIPPEL: Right. No, I wasn't expecting in  
19 terms of paperwork. But you have had a chance to see the  
20 opposition or the opposition papers of Adams I take it with  
21 respect to these witnesses.

22 MR. SHOOK: We have had a chance to see the  
23 paperwork, but we have no official position on this.

24 JUDGE SIPPEL: Okay. I am going to try and -- I  
25 am going to just cut to the chase on this. And let's see

1     what we have that is no contest on. Mr. Gilbert is going to  
2     testify. Mr. Fickinger is going to testify. And Mr.  
3     Garrison Cavell is going to testify. Now, I am using that  
4     term, "testify", in a broad context. Technically, and I  
5     think all counsel are aware of this, that these witnesses  
6     are being called not in the traditional context.

7             On the other hand, I am not going to just give a  
8     blank authorization to treat them as hostile witnesses just  
9     yet. If it comes to that, you know, we can shift gears very  
10    rapidly. But I think there should be a showing on the  
11    record that these witnesses were not cooperating in some  
12    way. And my experience with Mr. Gilbert was that he didn't  
13    seem to be much of -- that didn't seem to raise a problem.

14            MR. SOUTHARD: Your Honor, with respect to Mr.  
15    Gilbert and Mr. Fickinger, they are both adverse parties.

16            JUDGE SIPPEL: That is true.

17            MR. SOUTHARD: And citing to Rule 611(C), it seems  
18    to indicate that when a party calls a hostile witness, an  
19    adverse party or a witness identified by an adverse party,  
20    it seems -- that seems to indicate that per se an adverse  
21    party witness is a hostile party. And he can be  
22    questioned --

23            JUDGE SIPPEL: Is a hostile witness?

24            MR. SOUTHARD: -- by leading questions.

25            JUDGE SIPPEL: Yes. Well, as I -- I think I have

1 made that clear on one ruling with respect to Ms. Swanson,  
2 that I certainly am going to give leeway in terms of leading  
3 questions for purposes of getting a witness focused on a  
4 subject in terms of -- well, primarily for that purpose.  
5 But to the extent -- I would like to see the questions be  
6 more in the questions of direct questions. And then if the  
7 witnesses -- you know, if they are balking, if they are  
8 moving away from what you are trying to get at, we can shift  
9 gears quickly.

10 MR. SOUTHARD: Certainly. My concern here is  
11 particularly with respect to Mr. Gilbert and Mr. Fickinger  
12 who are principals of Adams. And we would like to be -- we  
13 would like to know in advance that we would be allowed to  
14 question them in a leading manner.

15 MR. COLE: Your Honor, they are going to be my  
16 witnesses on direct. And so, I mean, they have notice by me  
17 to appear and take direct testimony or give direct testimony  
18 in response to direct examination by me. And so what I have  
19 contemplated is that they would be available to Reading for  
20 cross examination with all that that entails. So to the  
21 extent that normally cross would entail some measure of  
22 leading questions, I have no problem with that.

23 JUDGE SIPPEL: All right.

24 MR. SOUTHARD: Your Honor, we anticipate calling  
25 Mr. Gilbert on possible direct as part of our case.



1 JUDGE SIPPEL: Before -- well, oh, as part of your  
2 case.

3 MR. SOUTHARD: Yes.

4 JUDGE SIPPEL: I hear you saying that. Well, what  
5 order -- how do you want to proceed as far as order is  
6 concerned. Wouldn't it be to your advantage if Mr. Cole put  
7 them on first?

8 MR. SOUTHARD: Certainly if Mr. Cole is -- I guess  
9 my concern is a tactical one. If I present my case and rest  
10 and Mr. Cole decides, oh, gee, I'm not going to call Mr.  
11 Gilbert, then I have lost my opportunity.

12 JUDGE SIPPEL: Well, he is already committed to  
13 doing that. I mean, if he walks in and says -- go ahead.

14 MR. SOUTHARD: I'm sorry. Then we can proceed on  
15 cross and that is fine. If I have got an assurance that he  
16 is going to call Mr. Gilbert, and then that is fine. We  
17 will proceed with Mr. Gilbert as a cross examination as well  
18 Mr. Fickinger.

19 JUDGE SIPPEL: Mr. Fickinger, all right. And then  
20 the others would just -- and so we will just see how it  
21 goes, just see how it goes. What I am trying to do is I am  
22 trying to keep the tone of the questioning down to the  
23 extent that I can and to make it as -- I don't want to say  
24 as comfortable for the witnesses -- as least uncomfortable  
25 for the witnesses as I can. And, all right. Well, then

1 getting back then to the issue at hand, with respect to --  
2 now, we have already covered Mr. Gilbert, Mr. Fickinger and  
3 Mr. Cavell. Am I pronouncing that right, Cavell?

4 MR. COLE: Cavell, yes.

5 JUDGE SIPPEL: Then we've got Mr. Haag and Mr.  
6 Umans. And Mr. Cole's pleading seemed to indicate that you  
7 wouldn't have any objection to them being called as  
8 witnesses so long as they were limited on cross examination  
9 or the scope of their examination would be limited to what  
10 is in their deposition testimony that had been on -- that  
11 are to be received -- or are going to be offered into  
12 evidence rather by Reading. Is that -- do I have that  
13 right?

14 MR. COLE: That's correct, Your Honor. And my  
15 take on this is that I did not name them as direct case  
16 witnesses on behalf of Adams. So they would not normally be  
17 taking the stand. As far as I can tell, they were not named  
18 as direct case witnesses by Reading Broadcasting either in  
19 anything that I have seen. And their names appear in a  
20 notice of their cross examination. I was a little bit non-  
21 plussed by that.

22 But I assume that it is because they had at least  
23 identified in their direct case exchange Mr. Haag and Mr.  
24 Umans to the extent that Haag and Umans had offered some  
25 testimony in deposition. It seems to me that if that is

1 their direct case coming in through Haag and Umans, then so  
2 be it. You know, let the depositions come in. And if Haag  
3 and Umans were to appear, the scope of cross examination by  
4 me would be limited to that which is in their depositions.

5 JUDGE SIPPEL: Oh, you are talking about your own  
6 cross examination of them.

7 MR. COLE: Yes, because I have not proposed to put  
8 them on direct. They are not my witnesses.

9 JUDGE SIPPEL: And then Reading could question  
10 them on redirect.

11 MR. COLE: Redirect limited to the scope of my  
12 cross.

13 MR. SOUTHARD: I'm not sure I understand the  
14 proposal. We would -- that the direct testimony of Mr.  
15 Umans and Mr. Haag would be introduced by the depositions?  
16 We would -- Mr. Cole would then have an opportunity to --

17 JUDGE SIPPEL: Cross examine.

18 MR. SOUTHARD: -- cross and we would have a chance  
19 to reply.

20 JUDGE SIPPEL: You would be redirecting. I don't  
21 see where you lose anything by that.

22 MR. SOUTHARD: That would be agreeable to us.

23 JUDGE SIPPEL: Then that takes care of Mr. Haag  
24 and Mr. Umans. That leaves us with Ms. Swanson and Mr.  
25 Sherwood. Now, there is no question in my mind that Ms.

1 Swanson is going to come in testify. And I know that you  
2 have made excellent arguments with respect to what was not  
3 in a trial brief, what should have been in a trial brief.

4 And I am very, very much aware about the -- your  
5 assertions with respect to the diligence of counsel to get  
6 depositions, to get discovery, to get these witnesses lined  
7 up in advance so that everybody knows what is happening.  
8 Unfortunately, that just is not the case. And I am living  
9 with that.

10 So I am exercising my discretion. I think that  
11 the testimony of Ms. Swanson and Mr. Sherwood are very  
12 important to the issue that I added. I think that there is  
13 no -- nobody is really being sandbagged in the ultimate  
14 sense on this at all. There is no secret. It has not  
15 been -- as of January of this year, it has not been a secret  
16 as to the interest in Ms. Swanson and Mr. Sherwood and their  
17 story. So unless -- does anybody have any further argument  
18 to make on this?

19 MR. COLE: None here, Your Honor, no.

20 MR. SOUTHARD: No, sir.

21 JUDGE SIPPEL: All right. Then they are on. Ms.  
22 Swanson and Mr. Sherwood are on. I take it that the  
23 subpoenas have been served?

24 MR. SOUTHARD: Yes, they have.

25 JUDGE SIPPEL: All right. And Ms. Swanson is --

1 what will be the order, Ms. Swanson first?

2 MR. SOUTHARD: To be honest, we haven't decided on  
3 an order, Your Honor.

4 JUDGE SIPPEL: All right. Well, I would strongly  
5 suggest that you do your utmost to keep that -- to keep her  
6 on the 19th because she has got -- I have learned that she  
7 has other business commitments that week. And --

8 MR. SOUTHARD: Your Honor, with respect to both  
9 Mr. Sherwood and Ms. Swanson, whether we end up taking them  
10 out of order, we will do them on the 19th. Mr. Sherwood has  
11 to come down from Reading, from Philadelphia. So we will do  
12 what we can to shift things around from our part to make  
13 sure that we get them both done on the 19th.

14 JUDGE SIPPEL: Okay. All right. Well, I  
15 appreciate that.

16 MR. COLE: And, Your Honor, from Adams point of  
17 view, we have no problem in working with the witnesses and  
18 with Reading to make sure that the witnesses, particularly  
19 non-party witnesses are accommodated as much as possible.

20 JUDGE SIPPEL: All right. Thank you very much. I  
21 am very concerned about that. Now, this is -- you already  
22 know this. But the -- you are going to get -- that is,  
23 Reading is going to get a considerable amount of claimed  
24 privilege material by the close of business today.

25 And I am going to get those, I am going to have my

1 review completed of the redacted materials that are going to  
2 come in tomorrow afternoon. I will get those to you if you  
3 are entitled to any of it.

4 You will certainly have it by Friday. You will  
5 certainly have it to work on over the weekend. And I don't  
6 see that there is going to be any -- I mean, it is going to  
7 be -- to the extent that it is a little tight, it is a  
8 little tight. But I can't see it not being able to be done  
9 in an efficient, professional manner. All right. That  
10 takes care of the witnesses on the Reading side.

11 MR. SOUTHARD: Actually, Your Honor --

12 JUDGE SIPPEL: You have more?

13 MR. SOUTHARD: -- there remains Eleanor Warren.

14 JUDGE SIPPEL: Oh, I'm sorry. I don't -- what is  
15 she in this thing for?

16 MR. SOUTHARD: She is a principal or identified as  
17 a principal.

18 JUDGE SIPPEL: Yes, but how much of a principal is  
19 she?

20 MR. SOUTHARD: I'm sorry?

21 JUDGE SIPPEL: How much of a principal is she?  
22 She is a small -- she's got a small stake in this, doesn't  
23 she?

24 MR. SOUTHARD: Well, she was identified as having  
25 been involved in Reading's initial search for a transmitter

1 site and obtaining brokers with respect to the Massachusetts  
2 application or the Massachusetts challenge.

3 JUDGE SIPPEL: Mr. Cole?

4 MR. COLE: I believe there was a passing reference  
5 to that at one point in one deposition. But I have to say,  
6 as I said in my objection, Your Honor, Ms. Warren was not  
7 deposed in the first go around. She hasn't been deposed in  
8 the second go around.

9 JUDGE SIPPEL: She has not?

10 MR. COLE: She has not been deposed.

11 JUDGE SIPPEL: At all.

12 MR. COLE: No. And she is not an officer. She is  
13 not a director. She is I believe a less than one percent  
14 shareholder of Adams. They have at this point access it  
15 would appear to Mr. Gilbert, Mr. Fickinger, Mr. Haag and Mr.  
16 Umans, all of whom are directors of Adams. And Mr. Haag and  
17 Mr. Gilbert between the two of them own a controlling share  
18 of the stock of Adams.

19 I don't understand what purpose is going to be  
20 served by bringing a less than one percent shareholder, non-  
21 officer, non-director down, particularly when she is  
22 apparently not sufficiently -- did nothing sufficiently  
23 important to date to depose her. She is also -- as far as I  
24 know -- I have not gone back over all of Adams' discovery  
25 response.

1 But to the best of my recollection, she has not  
2 been identified in any discovery response by us as -- other  
3 than, as I say, a passing reference I believe in Mr.  
4 Gilbert's -- at one point, that he had been referred by her  
5 to a real estate agent in connection with the Marlboro site  
6 search. I believe that testimony was given.

7 JUDGE SIPPEL: Where does she reside? What is her  
8 residence?

9 MR. COLE: I believe she lives in Boston.

10 JUDGE SIPPEL: She lives in Boston.

11 MR. SOUTHARD: Your Honor, first, the fact that  
12 she hasn't been deposed, I am not sure how that is relevant  
13 at all to whether or not she can be called as a witness.  
14 With respect to her ownership interest, first of all, the  
15 fact that she is a one-percent -- has a one-percent  
16 ownership interest, again, doesn't make her any less of a  
17 fact witness and, two, perhaps makes her even more likely to  
18 provide reliable testimony since she has less of a horse in  
19 the race so to speak.

20 JUDGE SIPPEL: That is an interesting way to put  
21 it.

22 MR. COLE: Your Honor, if I may, we are at trial  
23 now. This is not a point where you put witnesses on the  
24 stand and maybe they will be honest, maybe they will have  
25 something to say, maybe they won't. Theoretically at this



1 point, all the parties know what their respective proofs  
2 are. And our purpose here is to put those proofs in before  
3 you.

4 MR. SOUTHARD: Which is what we named her.

5 JUDGE SIPPEL: You get the last word. Well, I am  
6 going to -- again, in my -- in discretion, I think the  
7 arguments on both sides are good, really good arguments.  
8 But I don't see -- I am not convinced that Eleanor Warren is  
9 going to be able to add anything of significance to this  
10 case based on your proffer at this point because you  
11 really -- I mean, it comes down to really being basically  
12 too speculative.

13 She has got to be -- she would have to be brought  
14 down from Boston. And there is no indication -- you really  
15 don't have any idea as to what she is going to testify to.  
16 So I am going to -- I am going to knock her -- I am going to  
17 exclude her from your witness list. And everything -- I  
18 mean, you have everything else.

19 MR. SOUTHARD: May we reserve the right to call  
20 her on rebuttal?

21 JUDGE SIPPEL: Well, you can always -- yes. I  
22 mean, you can always -- you do have the right to call her on  
23 rebuttal. And I will certainly permit some limited  
24 questioning of the other witnesses in terms of what her role  
25 was. But, you know, it is going to be limited.

1           It's just I'm not going to permit discovery to be  
2     conducted with witnesses on the stand here. But I -- we all  
3     do want to get -- you know, we all do want to get the full  
4     story. So with that caveat, if you want to call it that, I  
5     think that takes care of the -- Mr. Cole's motion that was  
6     captioned as the --

7           MR. COLE: Your Honor, may I just ask one point of  
8     clarification?

9           JUDGE SIPPEL: Oh, absolutely.

10          MR. COLE: On reserving the right to call on  
11     rebuttal, may I correctly assume that any rebuttal in any of  
12     the Phase 2 or 3 would be subject to the same limitations as  
13     rebuttal in Phase 1; that is, that a showing must be made to  
14     you in advance and approval for rebuttal proffer be made  
15     before rebuttal will actually occur?

16          JUDGE SIPPEL: That's absolutely right.

17          MR. COLE: Thank you.

18          JUDGE SIPPEL: And I am not -- believe me, I am in  
19     no way -- I am not interested in having rebuttal unless  
20     there has been a -- I mean, unless I am convinced that a  
21     party is really entitled to it. I -- we have an enormous  
22     record already and it is going to get bigger as we -- all  
23     right. Then that takes care of the -- that preliminary  
24     matter.

25          I don't know. What is your motion? Your motion -

1 - I don't have the motion right in front of me.

2 MR. COLE: We had an objection. It was -- I  
3 believe it was called, "Objection to Witness Notification."

4 JUDGE SIPPEL: All right. To the extent that it  
5 has been denied in part and granted in part and we can now  
6 move on with the business at hand.

7 MR. COLE: thank you, Your Honor.

8 JUDGE SIPPEL: Now, part -- let me -- on the order  
9 of proof, and you do have something to say about this, I  
10 know, Mr. Cole. But as I -- again, as I -- we first do have  
11 a rebuttal witness that you are going to put on. Is that  
12 correct?

13 MR. COLE: That's correct.

14 JUDGE SIPPEL: And that would be a former employee  
15 of Reading?

16 MR. COLE: That is correct.

17 JUDGE SIPPEL: And his name is?

18 MR. COLE: Daniel Bendetti.

19 JUDGE SIPPEL: Right. Now, when can Mr. Bendetti  
20 be on the stand?

21 MR. COLE: Tomorrow morning at 10:00.

22 JUDGE SIPPEL: All right. And then after that?

23 MR. COLE: Mr. Wadlow.

24 JUDGE SIPPEL: Let me get these down. Okay.

25 MR. COLE: Mr. Wadlow and Ms. Freedman are both --

1 well, Mr. Wadlow is currently an attorney at Sidley and  
2 Austin and Ms. Freedman is formerly an attorney at Sidley  
3 and Austin. Both have represented Reading Broadcasting in  
4 the past. Both are currently represented by another  
5 attorney at Sidley with whom I have been working to schedule  
6 their appearances.

7 JUDGE SIPPEL: Who will that be?

8 MR. COLE: Well, the person that I have been  
9 working with is Alan Geolot, spelled G-E-O-L-O-T. And Mr.  
10 Geolot has advised that Mr. Wadlow will be available  
11 tomorrow afternoon at 1:30. Ms. Freedman's preference was  
12 to go Friday morning at 10:00. I told him that I thought we  
13 could accommodate that.

14 Obviously, if Your Honor would prefer me to try to  
15 schedule her at a different time, I could do that. But I do  
16 not anticipate that Ms. Freedman is going to take very long.  
17 And if it was her preference to go at 10:00, she is in town,  
18 so it is not -- I don't anticipate any problem getting her  
19 here, on and off the stand fairly promptly.

20 So my contemplated order at this point is to do  
21 Mr. Bendetti tomorrow morning, break for lunch, do Mr.  
22 Wadlow in the afternoon. I anticipate that Mr. Wadlow may  
23 take most of the afternoon and then start on Mr. Parker on  
24 Wednesday. And I would anticipate Mr. Parker from my point  
25 of view may take an entire day. I don't know. I am still

1 working on his examination.

2 JUDGE SIPPEL: We will start him at 9:30. Is that  
3 okay?

4 MR. COLE: That is fine with me.

5 JUDGE SIPPEL: Okay. That takes care of  
6 Wednesday.

7 MR. COLE: And, again, Thursday may be an off day  
8 or if Mr. Parker -- there is more stuff for Mr. Parker, that  
9 would be that. Ms. Freedman would be Friday morning. I  
10 also noticed Eric Kravitz, also a former counsel for Reading  
11 Broadcasting. And he is -- he has been served with a  
12 subpoena.

13 And Mr. Kravitz called and said he is going to be  
14 in Guatemala this week and, therefore, is unavailable.  
15 There is not much that I can do about that. But he has  
16 agreed to appear next Tuesday. I figured if we are going to  
17 have -- start Phase 3 right away next week, we would all be  
18 here. And I do not anticipate Mr. Kravitz will take longer  
19 than an hour or two on Tuesday morning.

20 JUDGE SIPPEL: All right.

21 MR. COLE: And he is set up for that. The only  
22 other two witnesses that I noticed were two members of the  
23 Mass Media Bureau's processing staff. I spoke with Mr.  
24 Shook about that. And Mr. Shook has agreed to work with me  
25 to try to come up with stipulation language as to what they

1 would testify to.

2 I believe we are close to having that worked out.  
3 Once I get a draft of that that Mr. Shook and I are  
4 comfortable with, I will certainly pass it along to Mr.  
5 Hutton and Mr. Southard for their comments. And ideally, I  
6 am hopeful that with all parties on board, we would obviate  
7 the need for Bureau testimony just through the stipulation  
8 process.

9 And so I don't think we will need to schedule the  
10 Bureau witnesses. If we do, if the stipulation breaks down  
11 for whatever reason and we have to schedule them, they are  
12 in the building. So --

13 JUDGE SIPPEL: All right. Let me ask Mr. Hutton,  
14 do you have any -- I mean, procedurally with the  
15 stipulation, do you have any objection or any comment that  
16 you want to make with respect to that?

17 MR. HUTTON: I do. I strongly question the  
18 relevance of the proposed testimony. The issue here is  
19 misrepresentation and lack of candor. And the state of mind  
20 that is relevant is the applicant's state of mind, not the  
21 Bureau's state of mind.

22 Whether or not the processing staff -- or how the  
23 processing staff read the applications in question really is  
24 not relevant here. What is relevant is a) was there a false  
25 statement or a material omission of a statement that was

1 required in order to make the application correct; and b)  
2 what was the applicant's state of mind. There has never  
3 been a case that has held that the Bureau's state of mind is  
4 relevant in that determination.

5 JUDGE SIPPEL: Let me see. Mr. Shook, do you want  
6 to -- what is your --

7 MR. SHOOK: Well, Mr. Hutton is correct to the  
8 extent that the Bureau's state of mind is not important  
9 here. We believe that when we are all finished, the  
10 stipulation will really do not much more than provide some  
11 background information and also verify some of the  
12 documentation that Mr. Cole has as part of Adams' exhibits.  
13 I really don't see the stipulation doing much more than  
14 that.

15 JUDGE SIPPEL: All right. Well, let's have Mr. --  
16 I would prefer to -- Mr. Hutton, I mean, you have heard what  
17 Mr. Shook said.

18 MR. SOUTHARD: Your Honor, if I may.

19 JUDGE SIPPEL: I'm sorry.

20 MR. SOUTHARD: I believe that we addressed this  
21 issue, we being Reading, addressed this issue as part of  
22 either our motion to enlarge or the opposition to Adams'  
23 motion for leave to appeal with the argument being  
24 essentially that the Bureau had not been misled. And that  
25 was -- I believe on that issue we got a ruling that the